

ORIGINAL
(duplicate)OFFICE OF THE INSURANCE COMMISSIONER
OF THE STATE OF WASHINGTON

| | | |
|---------------------------------|---|-------------------------|
| In the Matter of |) | No. D -2000-126 |
| |) | Consent Order Levying a |
| |) | Fine |
| |) | |
| HEALTHGUARD SERVICES |) | |
| OF WASHINGTON, |) | |
| |) | |
| Health Care Services Contractor |) | |
| _____ |) | |

FINDINGS OF FACT:

1. HealthGuard Services of Washington ("HealthGuard") is a Washington non-profit corporation which since 1990 has been continuously licensed as a health care services contractor registered to do business in the State of Washington and which was previously so licensed under the name Eldermed of Washington.
2. At all times from 1990 to the present, HealthGuard has been a wholly owned member corporation of PeaceHealth, a Washington non-profit corporation qualified as tax-exempt pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
3. On May 29, 1991, HealthGuard and PeaceHealth executed an inter-company financial transfer by exchanging One Hundred and Seventy Thousand Dollars (\$170,000) from PeaceHealth for a subordinated surplus note ("Surplus Note") from HealthGuard. Similar exchanges, utilizing the same form of Surplus Note and the same process but differing cash amounts, were executed on March 13, 1992, December 31, 1992, December 29, 1992, December 29, 1993, March 29, 1994, March 26, 1997, December 1, 1997, and December 14, 1999.
4. As required by the Washington State insurance code, HealthGuard has filed an annual financial statement with the Office of the Insurance Commissioner of the State of Washington ("OIC"). The HealthGuard financial statements filed with the OIC for the years of 1991, 1992, 1993, 1994, 1995, 1996, 1997, and 1998 each listed Surplus Notes from HealthGuard to PeaceHealth as part of the Net Worth of the Company.

5. On March 1, 1999, HealthGuard filed its annual financial statement for 1998 with the State of Washington. That filing listed a new surplus note issued in the fourth quarter of 1998, and seven other surplus notes as part of the Net Worth of the Company.
6. During the period between March 1, 1999 and June 16, 1999, the OIC, Division of Company Supervision, investigated its records and determined that HealthGuard had not filed solicitation permits for the eight Surplus Notes issued to date.
7. On June 25, 1999, HealthGuard issued a ninth subordinated Surplus Note to PeaceHealth using the same form and process as it had for the prior eight Surplus Notes.
8. By letter dated June 16, 1999, the OIC notified HealthGuard in writing that pursuant to RCW 48.44.037(3)(c) Surplus Notes could not be recorded as part of the Net Worth of the Company without approval by the OIC. The OIC notified HealthGuard that RCW 48.06 prohibits the issuance of subordinated surplus notes without obtaining a solicitation permit from the OIC.
9. On July 8, 1999, HealthGuard provided the OIC with copies of Surplus Notes A-I and notified the OIC that it would not issue an additional surplus note or any other type of security without following the procedures outlined in RCW 48.06 et seq.
10. On August 20, 1999, the OIC notified HealthGuard of the OIC's required changes to its Surplus Notes.
11. On September 10, 1999, HealthGuard responded to the OIC's August 20, 1999 correspondence and asked that the OIC reconsider its request that HealthGuard reform its Surplus Notes.
12. At all relevant times since July 27, 1997, HealthGuard has been subject to RCW 48.44.037 which establishes the statutory minimum net worth applicable to HealthGuard. Effective December 31, 1999, HealthGuard was required by RCW 48.44.037 to increase its minimum net worth to three million dollars and to maintain it at that level thereafter.
13. On December 23, 1999, March 17, 2000, and June 27, 2000, HealthGuard issued additional Surplus Notes to PeaceHealth in exchange for cash transfers necessary to comply with the minimum net worth required of HealthGuard by RCW 48.44.037. These Surplus Notes utilized the same form and process as all prior Surplus Notes and were not approved by the OIC nor were they issued pursuant to a valid Solicitation Permit.

14. During the period from September 10, 1999 until July 19, 2000, the OIC did not respond to HealthGuard's September 10, 1999 request for reconsideration regarding the form of its Surplus Notes.
15. HealthGuard does not meet the minimum net worth requirements for health care service contractors in the State of Washington if the referenced subordinated surplus notes are not included as part of its net worth.

CONCLUSIONS OF LAW:

1. HealthGuard's issuance of a subordinated surplus note without obtaining a solicitation permit from the OIC was a violation of RCW 48.06.030.
2. HealthGuard's filing of its 1998 and 1999 Annual Financial Statements recorded subordinated surplus notes not accepted by the Commissioner and therefore was in violation of RCW 48.44.037(3).
3. HealthGuard's filing of its 1999 Annual Financial Statements utilizing unaccepted subordinated surplus notes is a violation of RCW 48.44.100.
4. HealthGuard's use of the subordinated surplus notes as admitted assets caused its 1999 financial statements to be filed in violation of RCW 48.44.100.
5. RCW 48.44.166 and RCW 48.05.185 authorize the Commissioner to impose a fine in lieu of the suspension or revocation of an Health Care Services Contractor's Certificate of Registration.

CONSENT TO ORDER

HealthGuard does not contest the foregoing Findings of Fact and Conclusions of law. The Company consents to the entry of this Order.

The Commissioner has offered a settlement in lieu of suspending or revoking HealthGuard's Certificate of Registration.

By agreement of the parties, the OIC will impose a fine of Sixty Thousand Dollars (\$60,000), and suspend Thirty Thousand Dollars (\$30,000) for a period of two (2) years after which the suspended portion of the fine shall expire as though paid, on condition that:

1. HealthGuard will pay Thirty Thousand Dollars (\$30,000) of the fine for its violations of Washington insurance law.
2. HealthGuard will institute the remedial measures and report to the OIC on its progress regarding the implementation of the same as set forth in Exhibit A.

3. HealthGuard commits no further violations of the statutes and regulations that are the subject matter of this Consent Order from the date on which this Order is entered. If such a violation occurs, the OIC's suspension of the fine terminates and HealthGuard is obligated to pay the unpaid balance of the fine.
4. HealthGuard will pay the OIC within thirty (30) days of the entry of this Consent Order. Pursuant to RCW 48.05.185, failure to pay the fine within the allotted time shall constitute grounds for revocation of HealthGuard's certificate of registration, and for the recovery of the fine in a civil action brought on behalf of the Commissioner by the Attorney General of the State of Washington.

By its signature and consent to this Order, HealthGuard acknowledges its duty to comply fully with the applicable laws of the State of Washington.

EXECUTED this 18th day of December, 2000.

By: Howard W. Kriz
Howard W. Kriz

Title: President

ORDER

IT IS HEREBY ORDERED that pursuant to RCW 48.44.166 and RCW 48.05.185, the Commissioner hereby imposes a fine of Sixty Thousand Dollars (\$60,000), with Thirty Thousand Dollars (\$30,000) suspended for a period of two (2) years after which the suspended portion of the fine shall expire as though paid upon HealthGuard Services of Washington. The fine shall be paid by the Company within thirty (30) days of the date of entry of this Order. Failure to pay the fine within the allotted time shall constitute grounds for the revocation of the Company's Certificate of Registration, and for the recovery of the fine in a civil action brought on behalf of the OIC STET by the Attorney General of the State of Washington.


HealthGuard shall reform its existing subordinated surplus notes as required by the OIC Division of Company Supervision. HealthGuard shall perform Conditions one - four as set forth in the "Consent to Order" section of this Consent Order. The Commissioner may impose the balance of the suspended

fine and suspend or revoke HealthGuard's Certificate of Registration if the Company fails to meet these conditions.

ENTERED AT OLYMPIA, WASHINGTON this 29th day of December, 2000.

DEBORAH SENN
Insurance Commissioner

By



Meg L. Jones
Assistant Deputy Commissioner
Legal Affairs

EXHIBIT A
CONSENT ORDER LEVYING A FINE

HealthGuard Services of Washington agrees to the following remedial measures, which are incorporated by reference to the Consent Order Levying a Fine executed by HealthGuard Services of Washington and the Office of the Insurance OIC:

1. HealthGuard shall reform all its subordinated surplus notes to conform to the form and substance required by the OIC's Division of Company Supervision. Such reform shall occur not later than December 22, 2000, by delivery of a copy of each reformed note to the OIC accompanied by certified copies of any and all necessary PeaceHealth or HealthGuard Board of Directors resolutions approving the reformation.
2. HealthGuard shall direct its third party administrator to establish internal policies and procedures governing the issuance of subordinated surplus notes which include the following components:
 - a. Responsible person(s), process and timing for identifying need for subordinated surplus notes, which permits sufficient OIC review time for any solicitation permit filed;
 - b. Notice to the PeaceHealth and HealthGuard Board of Directors of HealthGuard's financial status and the need for the subordinated surplus note, and notice to the same of any communication from the Office of the Insurance Commissioner; and
 - c. Internal sanctions for violation of RCW 48.44 et seq. or RCW 48.06. et seq.

HealthGuard shall provide a copy of these policies and procedures to the OIC for the OIC's approval not later than December 22, 2000.

3. HealthGuard shall maintain the net worth of the Company at the minimum statutory level for health care service contractors.